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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 29th November, 2017*

+ W.P.(C) 11298/2016

CT/GD KSHIROD KUMAR SWAIN Petitioner

Through: Ms.Garima Sachdeva, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mrs.Bharathi Raju, CGSC for UOI
with Insp.Sanjay Kumar, CISF for
Respondents no.1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition under Section 226 of the Constitution of India, the petitioner seeks a writ of mandamus directing the respondents to appoint (by way of LDCE-2015) him to the post of Assistant Sub-Inspector (GD) and grant him all the consequential benefits except back wages. A Writ of Certiorari is also sought to quash the findings of the Medical Review Board dated 07.11.2016 whereby the respondents had declared the petitioner 'unfit'. Some of the facts are that the petitioner joined the CISF as a Constable/General Duty on 06.09.2008 and has been working on the aforesaid post for the past many years. The petitioner applied for the post of Assistant Sub-Inspector (GD) through Limited Departmental Competitive Examination 2015 (LDCE-2015). The petitioner was placed in medical category Shape-I in all his previous medical examinations and

claims to be carrying out his duties as a Constable/GD to the satisfaction of his superiors. The petitioner appeared for a written examination on 11.01.2016 and thereafter was called for his physical examination on 26.02.2016 based on his performance in the written test on PET. The petitioner was then called for his medical examination on 03.10.2016 held at the CISF Unit Special Security Group, Greater Noida, Uttar Pradesh. In aforesaid examination, the petitioner was declared medically 'unfit' on the ground of defective distant vision of right eye and Polycythaemia and was given liberty to apply for examination by a Review Medical Board. After receiving the medical report dated 04.10.2016, whereby the petitioner was declared 'unfit', he underwent post refractory/laser surgery to rectify the defective vision in his right eye. Thereafter the petitioner visited Ram Manohar Lohia Hospital. Thereafter he underwent a medical examination and was declared medically fit by the Hospital vide report dated 04.10.2016. Upon receipt of the fitness certificate from Ram Manohar Lohia Hospital, the petitioner applied for a Review Medical Board and he was called upon to appear before the Review Medical Board on 04.11.2016 at 0800 hrs. Vide a report dated 7.11.2016, the petitioner was once again declared medically unfit although the defect was cured. In this backdrop, the petitioner has approached this Court. Learned counsel for the petitioner on the last date of hearing had submitted that cases of identically placed persons were considered by the respondent favourably and were permitted to appear before the Review Medical Board.

2. She would refer to the Judgments of this Court in the cases of *Ajay Pandey v. Union of India*, W.P.(C) No.1938/2011, *Ravinder Lamba v. Union of India*, W.P.(C) 5421/2011, both dated 28.07.2014 and *Satvir Singh v. Union of India and Ors*, W.P.(C) No. 1315/2015 & *Mohan Reddy v. Union of India and Ors*, W.P.(C) No. 1320/2015, both dated 12.02.2015, wherein this Court had allowed the petitioners therein to re-appear before the Review Medical Board and in case found fit, they were to be considered for the post in accordance with the recruitment process. The matter was adjourned to enable the learned counsel for the respondents to seek instructions. The learned counsel very fairly submits, on instructions, that in the cases of Ajay Pandey, Ravinder Lamba, Satvir Singh and Mohan Reddy, the orders passed by the Coordinate Bench, in similar circumstances have attained finality. The petitioners have been allowed to appear before the fresh Medical Board constituted. Counsel further submits that the respondents as an exception are willing to apply the same procedure in case of the present petitioner subject to the condition that this order would not be treated as a precedent in any other matters as the respondents have firm instructions not to grant such a concession in future.
3. Having heard the learned counsel for the parties and taking into consideration the submissions made, we quash the findings of the Medical Board dated 07.11.2016. The petitioner will be entitled to appear before the fresh Medical Board which will be constituted which would assess the petitioner and thereafter an appropriate order would be passed in accordance with the recruitment process. We make

it clear that this order will not be treated as a precedent as the order is being passed in the peculiar facts and circumstances of the present case.

4. This petition is disposed of in above terms.

C.M.17396/2017 (directions)

5. This application has been filed on behalf of respondent no.1 seeking its deletion from the array of the parties.
6. In view of the order passed in the writ petition, no orders are required to be passed in the present application.
7. The application is accordingly stands disposed of.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 29, 2017
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